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PCT/EP2003/00594

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NOTIFICATION OF TRANSMITTAL
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OF THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT

(PCT Rule 72.2)

Patent, Marken u. d. l. i. l.

From the INTERNATIONAL BUREAU

US - Birch
NZ - Baldwin

15. Feb. 2005 To:

BASF AKTIENGESELLSCHAFT
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2. Ref

EL: Phase beendet 12.11.04

IMPORTANT NOTIFICATION

Date of mailing (day/month/year)
10 February 2005 (10.02.2005)Applicant's or agent's file reference
0000053662International application No.
PCT/EP2003/005949 -International filing date (day/month/year)
06 June 2003 (06.06.2003)

Applicant

BASF AKTIENGESELLSCHAFT et al

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation made by the International Bureau of the international preliminary examination report established by the International Preliminary Examining Authority.

2. Transmittal of the copy of the translation to the elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following elected Offices requiring such translation:

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3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary examination report.

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

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Translation

PATENT COOPERATION TREATY

PCT/EP2003/0059



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 0000053662	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/005949	International filing date (day/month/year) 06 June 2003 (06.06.2003)	Priority date (day/month/year) 20 June 2002 (20.06.2002)
International Patent Classification (IPC) or national classification and IPC A01N 37/52		
Applicant BASF AKTIENGESELLSCHAFT		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☐ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of _____ sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☐ Certain observations on the international application

Date of submission of the demand 18 December 2003 (18.12.2003)	Date of completion of this report 07 September 2004 (07.09.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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I. Basis of the report

1. This report has been drawn on the basis of *(Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to the report since they do not contain amendments.)*:

- ☐ the international application as originally filed.
- ☒ the description, pages 1-22, as originally filed,
 pages _____, filed with the demand,
 pages _____, filed with the letter of _____,
 pages _____, filed with the letter of _____.
- ☒ the claims, Nos. 1-10, as originally filed,
 Nos. _____, as amended under Article 19,
 Nos. _____, filed with the demand,
 Nos. _____, filed with the letter of _____,
 Nos. _____, filed with the letter of _____.
- ☐ the drawings, sheets/fig _____, as originally filed,
 sheets/fig _____, filed with the demand,
 sheets/fig _____, filed with the letter of _____,
 sheets/fig _____, filed with the letter of _____.

2. The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

3. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

4. Additional observations, if necessary:

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-10	YES
	Claims		NO
Inventive step (IS)	Claims	1-10	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-10	YES
	Claims		NO

2. Citations and explanations

Reference is made to the following documents:

D1: EP-A-1 023 834 (AMERICAN CYANAMID CO)

2 August 2000 (2000-08-02) (mentioned in the application)

D2: WO 02 062140 A (SCHELBERGER KLAUS; BASF AG (DE); EICKEN KARL (DE); LORENZ GISELA) 15 August 2002 (2002-08-15)

D3: WO 02 056686 A (LEYENDECKER JOACHIM; SCHELBERGER KLAUS (DE); BASF AG (DE); LORENZ) 25 July 2002 (2002-07-25)

D4: EP-A-1 077 028 (NIPPON SODA CO) 21 February 2001 (2001-02-21)

The present invention pertains to the preparation of fungicidal mixtures comprising a benzamidoxime derivative (1), a benzophenone (2), epoxiconazole (3) and, optionally, pyraclostrobin (4) as active constituents.

Novelty (PCT Article 33(2))

None of the citations (D1-D4) describes a fungicidal mixture that comprises at least the constituents (1), (2) and (3). D1 describes a fungicidal mixture comprising

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metrafenone (2) and epoxiconazole (3). D2 pertains to fungicidal mixtures comprising a benzamidoxime derivative (1) and metrafenone (2).

D3 describes fungicidal mixtures comprising metrafenone (2), epoxiconazole (3) and pyraclostrobin (4).

D4 describes bactericidal compositions comprising a benzamidoxime derivative (1) and an SBI group constituent (epoxiconazole is indicated).

Claims 1-10 may therefore be considered novel.

Inventive step (PCT Article 33(3))

The mixtures as per the invention act synergistically (see examples 1-2 in the description) and show improved activity in controlling harmful fungi, in particular, powdery mildew in cereal, vegetable and vinefruit crops compared with the compositions described in D1-D4. Claims 1-10 therefore involve an inventive step.

Industrial applicability (PCT Article 33(4))

Industrial applicability may be acknowledged with respect to claims 1-10.

PCT Article 6

Contrary to PCT Article 6, claim 1 is not supported by the examples in the description, since the scope of the claim goes beyond that justified by the description and the drawings. The reasons are: the description contains no examples of a fungicidal mixture based on benzamidoxime derivatives, benzaphenones, epoxiconazole and (optionally)

pyraclostrobin.

Moreover, the examples in the description (pages 16, 17 and 21) with compound I, wherein $R_n = H + \text{metrafenone(II)} + \text{pyraclostrobin(IV)}$, create the impression that the subject matter for which protection is sought does not correspond to the subject matter defined in the claims. This leads to a lack of clarity (PCT Article 6) when the description is used to interpret the claims (cf. PCT Guidelines, paragraph III-4.3a).

The constituents II-9 to II-11, II-48 to II-51 and II-63 to II-66 in the description (pages 4-6) are not supported by claim 1 (R^4 represents a C_1-C_6 alkyl or benzyl, wherein the phenyl moiety of the benzyl residue can carry a halogen or methyl substituent).